

REMARKS

Claim 43 has been amended. New claim 49 has been added. Claims 13-17, 19-23 and 43-49 are pending.

Claims 13-16, 17, 19 and 48

Independent claim 13-17 and 48 stand rejected under 35 U.S.C. 103(a) as being unpatentable over USP 6,626,317 to Pfiefer et al. ("Pfiefer") in view of USP 5,328,048 to Stein ("Stein"). This rejection is respectfully traversed.

Claim 13 includes the following limitations that distinguish it from the cited Pfiefer and Stein patents:

1. Claim 13 recites a four-sided shell having a straight rear wall. In contrast, the shell in Pfiefer's trash can has three sides, and does not have a straight rear wall.

2. Claim 13 recites that the frame has an upper edge that has the same perimeter as the shell. In contrast, neither Pfiefer nor Stein disclose a frame having an upper edge that has the same perimeter as the shell. First, the tote box 10 in Stein does not have a frame that is secured to the top edges of the side walls 12, 14. Instead, Stein uses the top of its side walls 12, 14 to hingedly connect a lid 20. Second, as best seen in FIG. 2 of Pfiefer, the frame 4 in Pfiefer has an upper edge that has a greater perimeter than the shell 2. Thus, even if the combination of Pfiefer and Stein were proper (which Applicant disputes), **this combination will not yield the assembly claimed in claim 13.**

Thus, Applicant respectfully submits that claim 13, and claims 14-17, 19 and 48 depending therefrom, are allowable over Pfiefer and Stein.

Claims 20-23

Claims 20-23 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Pfiefer in view of USP 4,663,803 to Gora ("Gora"). This rejection is respectfully traversed.

Claim 20 recites that the frame has an upper edge that has the same perimeter as the shell. In contrast, neither Pfiefer nor Gora disclose a frame having an upper edge that has the same perimeter as the shell. First, as best seen in FIG. 2 of Pfiefer, the frame 4 in Pfiefer has an upper edge that has a greater perimeter than the shell 2. Second, Gora does not appear to have any frame that is secured to the top edges of the side walls, and to the extent the top-most part of the walls of the container 10 in Gora can be considered to be the claimed "frame", this top-most part defines a flange such that its upper edge has a greater perimeter than the rest of the container 10. Thus, neither Pfiefer nor Gora disclose a frame having an upper edge that has the same perimeter as the shell.

In addition, claim 20 recites that the slot is inwardly offset from the perimeter of the frame. In contrast, Applicant does not see where Gora discloses a sleeve retained in a slot that is inwardly offset from the perimeter of the frame:

1. It is not clear that Gora discloses a frame. As pointed out above, if the top-most part of the walls of the container 10 in Gora are considered to be the claimed "frame", this top-most part defines a flange such that its upper edge has a greater perimeter than the rest of the container 10. This means that the limitation that "the frame has an upper edge that has the same perimeter as the shell" is clearly not met by both Gora and Pfeifer, which thereby means that the combination of Pfeifer and Gora (even if proper) would not yield all the limitations of claim 20.
2. Applicant cannot see how the elements in FIGS. 4, 5, 7 and 8 disclose the claimed slot and sleeve.
 - a. In particular, Gora discloses lid sections 12 rotatably joined to the walls of the container 10 by a hinge joint 14. Each lid section 12 has hinge ends 16 and 18, each having blind hinge eyes 20 and 22, respectively. Each blind hinge eye 20, 22 has a closed end 24 and a lead-in slot 28. Each lid section 12 also has integrally-provided open hinge eyes 30. In addition, open hinge eyes 32, 33 are integral with the wall of the container 10. The open hinge eyes 30, 32, 33 are positioned between the blind hinge eyes 20, 22 (see FIG. 1). A single hinge pin 34 extends through all the hinge eyes 20, 22, 30, 32, 33 to connect a lid section 12 to a wall of the container 10. To assemble the hinge joint 14, the hinge eyes 20, 22, 30, 32, 33 are aligned, and the first end 16 of lid section 12 is flexed to flex the first blind hinge eye 20 away from the rest of the hinge joint 14 (see FIGS. 4 and 7). The hinge pin 34 is then inserted lengthwise through the open hinge eyes 30, 32, 33 and into the second blind hinge eye 22 until one end of the hinge pin 34 abuts the closed end 24 in the second blind hinge eye 22. The first blind hinge eye 20 is then flexed again so that the other end of the hinge pin 34 enters the lead-in slot 28 into the first blind hinge eye 20.
 - b. Applicant assumes that the Examiner is construing the open hinge eyes 30 to correspond to the claimed sleeve, and the spaces between the hinge eyes 32, 33 (i.e., the spaces that receive the hinge eyes 30) to correspond to the claimed slot. However, these spaces between the hinge eyes 32, 33 are not inwardly offset from the perimeter of any frame.

To further highlight the distinctions between the claimed hinge joint in claim 20 and the hinge joint disclosed in Gora, Applicant has added new claim 49, which recites that the sleeve is a single sleeve and the slot is a single slot. To the extent that the open hinge eyes 30 in Gora are construed to correspond to the claimed sleeve, there are a plurality of these hinge eyes 30, and Gora does not disclose a single sleeve received in a single slot.

Thus, Applicant respectfully submits that claim 20, and claims 21-23 and 49 depending therefrom, are allowable over Pfiefer and Gora.

Claims 43-47

Claims 43-47 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Pfiefer in view of Stein and USP 2,549,572 to Campanelli ("Campanelli"). This rejection is respectfully traversed.

Claim 43 has been amended to recite that the recess has a width that is wide enough to receive a human foot. In contrast, the notches 14 and 15 in Campanelli cannot correspond to the claimed recess because it is clear from the drawings and specification in Campanelli that a human foot cannot be received inside these notches 14, 15.

In addition, Applicant submits that the proposed combination of Pfiefer+Stein+Campanelli is not proper when viewed in the context of amended claim 43.

In this regard, Applicant submits that it would not be obvious to modify the trash can in Pfiefer to provide a four-sided trash can having a toe-kick recess for receiving the pedal bar and for receiving a human foot. Significant modification will be required to provide a toe-kick recess in the curved front wall of Pfiefer's trash can, and to extend the foot pedal through such a recess in the curved front wall. For example:

1. The configuration of Pfiefer's pedal bar 15 (i.e., extending outwardly from the base 3 around the entire curved front wall) is not conducive to providing a recess that is wide enough to receive the pedal bar 15 and a human foot.

2. The skilled person would need to modify the three-sided configuration of the shell 2 in Pfiefer (having two straight side walls and a curved front wall) to obtain a four-sided trash can.

3. The base 3 in Pfiefer would need to be significantly modified in order to receive the pedal bar 15 (e.g., the base 3 may need to be enlarged).

When all of these above factors are considered together, Applicant respectfully submits that it would not be proper for Pfiefer to be combined with Stein and Campanelli

to reach the claimed invention because significant modifications (many of them lacking suggestion in the prior art) would need to be made. Thus, claim 43, and claims 44-47 depending therefrom, are submitted to be allowable over Pfiefer, Stein and Campanelli.

* * *

In light of the above reasons, all pending claims are submitted to be in condition for allowance. The Examiner is encouraged to telephone the undersigned if the Examiner has any proposed amendments that can place this application in condition for allowance.

Respectfully Submitted,



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